IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11211 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHIF GANIBHAI PINJARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11211 of 2003

MR AR SHAIKH for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Rajkot City on

31.1.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds of detention served upon the petitioner and placed on record reveal that the detaining authority mainly relied upon two facts for reaching to the subjective satisfaction. Firstly, the detaining authority relied upon registration of crime against the petitioner, in all, four, under sec. 380 of IPC and in-camera statements of two witnesses recorded by the proposing authority on 27.1.2003 and verified by the detaining authority 28.1.2003. The statements revealed the incidents taken place on 14.11.2002 and on 28.9.2002 wherein both the witnesses stated about the activities of the petitioner and head-strong temperament of the petitioner. Both of the witnesses revealed the individual quarrel picked up by the petitioner with the witnesses. From the above material, the order of detention impugned in this petition came to be passed by the detaining authority.

Ld. advocate Ms. Datta for Mr. AR Shaikh for the petitioner and Ld. AGP Ms. Panchal for the respondents were heard at length.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this petition can be disposed of on the ground that whether the order of detention is vitiated by non-application of mind. On going through the record, it clearly appears that the petitioner was in judicial custody in all the four offences registered against the petitioner when the order of detention came to be served upon him. In this respect, the detaining authority reached to subjective satisfaction that the petitioner was likely to be released on bail on preferring the bail application and was likely to continue his illegal activity. Ld. advocate for the petitioner makes a statement that till today, the petitioner has not preferred any bail application to be released on bail in the above said offences. Though this contention is vehemently opposed and controverted by ld. AGP but the facts of this case are covered by the decision of the Apex Court in the matter of Amtrilal & Ors., vs. Union Government, through Secretary, Ministry of Finance & Ors., as reported in AIR 2000 SC 3675. It appears that there was no cogent material before the detaining authority to reach to subjective satisfaction that the

petitioner was likely to be released on bail and was likely to continue his illegal activity. In this view of the matter, the order of detention is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 31.1.2003 by the Police Commissioner, Rajkot City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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